IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18491 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITBHAI SHANTILAL & 5 - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR GM AMIN for Petitioners
MS KRINA P. CALLA, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 06/03/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Rule. Ms.Krina P.Calla, learned Assistant Government Pleader, waives service of notice on behalf of the respondents. It may be mentioned that initially, notice was issued to the respondents and as is evident from the order-sheet, the matter was heard from time to time at length on different dates. Therefore, having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate Writ or order directing the respondents to disburse the compensation payable to them as per the award dated May 21, 2004, made under Section 28A of the Land Acquisition Act, 1894 (“the Act” for short), with running interest at the rate of 18% from the date of taking over the possession till the date of payment of compensation.

3. The petitioners were the owners of lands bearing Survey Nos.450, 448, 454, 389, 484, 402, and 389

situated at village Harsoli, Taluka: Dehgam, District: Gandhinagar. A proposal was received by the State Government to acquire those lands and other lands situated at village Harsoli for the public purpose of construction of canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of the petitioners and other lands specified therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on December 27, 1990. Thereafter, necessary inquiry under Section 5A of the Act was made and a report was forwarded by the Special Land Acquisition Officer to the State Government, as contemplated by Section 5A(2) of the Act. On the basis of the said report, a declaration under Section 6 of the Act was made which was published in the official gazette on August 27, 1991. The interested persons were thereafter served with notices for determination of compensation payable to them. The Special Land Acquisition Officer, after hearing the claimants, made two awards, dated April 23, 1992 and August 4, 1993. By those awards, he

offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. for Bagayat lands and Rs.1.40 ps. per sq.mt. for Jirayat lands. Some of the claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were numbered as Land Acquisition Reference Nos.18/1994 to 53/1994 and 128/1994 to 159/1994. The Reference Court passed an award on January 31, 2002, and enhanced compensation payable to the claimants to Rs.30.90 ps. per sq.mt. with statutory benefits.

4. The petitioners had not filed any application under Section 18 of the Act, requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. However, Section 28A of the Act confers a right on those claimants who have not filed applications under Section 18 of the Act to require the Collector to re-determine the amount of compensation payable to them on the basis of the

award of the Court. Accordingly, the petitioners made applications under Section 28A of the Act on February 7, 2002, requiring the Special Land Acquisition Officer to re-determine the amount of compensation payable to them on the basis of the award of the Court dated January 31, 2002.

5. It needs to be stated that inordinate delay was taking place while disposing of applications submitted under Section 28A of the Act and therefore, pursuant to directions given by the High Court in Special Civil Application No.8032 of 1996, the Revenue Department of Government of Gujarat has issued a Circular dated March 10, 1997, stipulating interalia that the applications under Section 28A of the Act should be decided promptly and after getting the award sanctioned, compensation should be paid to the claimants within three months from the date of receipt of such applications. A copy of the Circular dated March 10, 1997, is produced by the petitioners at Annexure-I to the petition In spite of the Circular of the Government dated March 10, 1997, the application submitted by the petitioners under Section 28A of the

Act on February 7, 2002, was not decided promptly nor amount of compensation awardable to them on the basis of the award of the Court was paid to them. Therefore, the petitioners had no alternative but to invoke jurisdiction of this Court under Article 226 of the Constitution. Accordingly, the petitioners filed Special Civil Applications No.1752 of 2003 and 1773 of 2003 seeking appropriate directions against the respondents. During the course of hearing of those petitions, the learned Assistant Government Pleader appearing for the State Government and the Special Land Acquisition Officer made a statement on instructions of the concerned Special Land Acquisition Officer that the award passed by the Reference Court was accepted by the State Government and that the application submitted by the petitioners under Section 28 of the Act would be disposed of within eight weeks from the date of the judgment of the High Court. In view of the statement made at the Bar by the learned Assistant Government Pleader, the Court was of the opinion that no order was necessitated and the petition deserved to be disposed of as having become infructuous. However, in view of the statement made

by the learned Assistant Government Pleader, the Court directed the State Government to pronounce the award under Section 28A of the Act within eight weeks from the date of the judgment while disposing of the petitions. A copy of the judgment rendered in Special Civil Applications No.1752 of 2003 and 1773 of 2003 is produced by the petitioners at Annexure-A to the petition. Neither the officer, on whose instructions statement was made at the Bar by the learned Assistant Government Pleader did not dispose of the application filed by the petitioners under Section 28A of the Act within eight weeks from the date of the judgment nor the State Government could pronounce the award under Section 28A of the Act within eight weeks as directed by the Court. Therefore, the petitioners filed Miscellaneous Civil Applications No.511 of 2004 and 531 of 2004 with a prayer to the Court to initiate contempt proceedings against the respondents. During the course of hearing of those applications, again, the learned Assistant Government Pleader made a statement at the Bar that the award would be declared within six weeks from the date of the order. Even an affidavit was also filed in both the

matters to this effect. In view of the statement made at the Bar by the learned Assistant Government Pleader as well as the statements made in the affidavits-in-reply, the Division Bench was of the opinion that it was not necessary to initiate any contempt proceedings against the opponents at that stage. Therefore, both the applications were accordingly disposed of by an order dated May 7, 2004, a copy of which is produced by the petitioners at Annexure-C to the petition

6. The record shows that award under Section 28A of the Act was made on May 21, 2004, a copy of which is produced by the petitioners at running page 58 of the compilation. However, after making award under Section 28A of the Act, no steps were taken by the respondents to make payment of compensation in terms of the said award to the petitioners. Therefore, the petitioners again invoked jurisdiction of the High Court under Article 226 of the Constitution by filing Special Civil Applications No.13378 of 2005 and 13650 of 2005 seeking appropriate directions against the respondents. The Division Bench of this Court heard

Mr.G.M.Amin, learned counsel for the petitioners and Mr.H.L.Jani, learned Assistant Government Pleader for the respondents, Mr.H.L.Jani, learned Assistant Government Pleader, on instructions from Mr.V.K.Khamar, Special Land Acquisition Officer and Mr.A.B.Barot, Incharge Executive Engineer, Sardar Sarovar Narmada Nigam, who were present in the Court, stated at the Bar that the process of making payment to the petitioners as per the award dated February 2, 2005, was on but some time would be required for complying with the procedure and that within two months from the date of the order of the High Court, necessary payment would be made to the petitioners. In view of the statement made by the learned Assistant Government Pleader on instructions of the officers who were present in the Court, Mr.G.M.Amin, learned counsel for the petitioners, sought permission to withdraw the petitions with liberty to revive the same in the event of any difficulty. The permission as prayed for by Mr.Amin was granted and the petitions were disposed of as withdrawn, with liberty to revive the same in the event of any difficulty, by order dated August 26, 2005. It

may be mentioned that in the order dated August 26, 2005, there is reference to award dated February 2, 2005. It is argued between the learned counsel for the parties that it was a mistake and the correct date of award is May 21, 2004, which should have been mentioned in the said order. A copy of the said order is produced by the petitioners at Annexure-J to the petition.

In spite of the solemn statement having been made by Mr.H.L.Jani, learned Assistant Government Pleader for the respondents before the Court, upon the instructions of Mr.V.K.Khamar, Special Land Acquisition Officer and Mr.A.B.Barot, Incharge Executive Engineer, Sardar Sarovar Narmada Nigam, the same was not honoured by the respondents, and therefore, the petitioners, through their learned advocate, addressed a notice dated September 14, 2005, to the Executive Engineer, Sardar Sarovar Narmada Nigam Limited, requesting him to make payment of compensation. However, same was not heeded to at all. Therefore, the petitioners were compelled to initiate Miscellaneous Civil Application

No.2478 of 2005 for revival of Special Civil Application No.13650 of 2005 . In Miscellaneous Civil Application Nos.2478 of 2005 with 2477 of 2005, the Court passed the following order:

"Notice to the respondents returnable on 2.12.2005. In the meantime, the Special Land Acquisition Officer – respondent No.4 herein is directed to comply with the order passed by this Court on 26.8.2005 in Special Civil Application No.13378 of 2005 with Special Civil Application No.13650 of 2005. Direct Service is permitted."

7. From the record, it is clear that the award dated May 21, 2004, made under Section 28A of the Act was modified by the respondents and lesser amount was sought to be paid to the petitioners. Therefore, the petitioners had refused to accept the amount offered to them and had lodged objections. The Court, therefore, while disposing of Miscellaneous Civil Application No.2478 of 2005, gave following directions vide order dated December 16, 2005:

"It appears that the applicants have not accepted the amount of compensation which has already been earmarked for making payment to them on the ground that they have certain objections and these objections have already been lodged with the opponents. In view of the same, the concerned respondents are directed to consider the objections of the applicants on their

merits and pass appropriate order thereon as expeditiously as possible but in any case, not later than 17.1.2006. After the decision is taken, whatever the compensation that is determined for the applicants be disbursed without any delay after hearing them. In view of the same, this application stands disposed of."

The record further shows that the objections raised by the petitioners were considered and by communication dated January 16, 2006, they were called upon to receive the amount mentioned therein as per the revised order but the petitioners had refused to accept the same as the amount offered to them was lesser than what was determined as payable by award dated May 21, 2004. A copy of the said communication is produced by the petitioners at Annexure-Q to the petition. The case of the petitioners is that for the first time, the petitioners learnt that the award dated May 21, 2004, was modified by the respondents in an illegal manner and that too, without hearing them. The grievance made by the petitioners is that non payment of the compensation to them in terms of the award dated May 21, 2004, made under Section 28A of the Act is arbitrary as well as illegal and therefore, appropriate directions should be issued

to the respondents to make payment of compensation to the petitioners in terms of award dated May 21, 2004. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

8. On service of notice, Mr.T.K.Damor, Special Land Acquisition Officer, Unit No.3, Ahmedabad, has filed affidavit-in-reply on behalf of the respondent No.2 and controverted the averments made in the petition, to which the petitioners have filed rejoinder dated January 17, 2007. Mr.T.K.Damor, Special Land Acquisition Officer, Unit No.3, Ahmedabad, has filed further affidavit-in-reply to the rejoinder filed by the petitioners as well as further affidavit-in-reply on February 2, 2007.

9. This Court has heard Mr.G.M.Amin, learned counsel for the petitioners and Ms.Krina P.Calla, learned Assistant Government Pleader for the respondents, at length and in great detail. This Court has also considered the documents forming part of the petition

10. During the course of hearing of the petition, Ms.Krina

P.Calla, learned Assistant Government Pleader for the respondents, has produced a communication dated March 6, 2007, addressed by the Special Land Acquisition Officer (Narmada Yojna), Unit No.3, Ahmedabad, to the learned Government Pleader, Gujarat High Court, for perusal of the Court. It is ordered to be taken on the record of the case. In the said communication, it is mentioned that the approval dated August 22, 2005, granted to the revised award made under Section 28A of the Act is cancelled by the Government and that approval sought by letter dated May 14, 2004, to the original award made under Section 28A of the Act holding that the petitioners were entitled to compensation of Rs.40,04,233/- is granted. It may be mentioned that the letter dated May 14, 2004, seeking approval to the award of Rs.40,04,233/- is on record of the case at page 179 of the compilation. In the said communication dated March 6, 2007, it is also mentioned that the amount mentioned in the award dated May 21, 2004, was paid to the claimants on march 5, 2007, except claimants – Jasvantlal Mangaldas Shah and Gunvantlal Somchand, who could not remain present to receive the amount

of compensation.

11. Mr.G.M.Amin, learned counsel for the petitioners, has produced a communication dated March 5, 2007, addressed by the petitioners to the Special Land Acquisition Officer (Narmada Yojna), Unit No.3, Narmada Vasahat, Vejalpur, Ahmedabad, for perusal of the Court. It is also ordered to be taken on the record. In the said communication, it is stated that the interest payable is calculated only upto April 30, 2004, but the petitioners are entitled to interest from the date of the award made under Section 28A of the Act which is May 21, 2004 to March 5, 2007, and therefore, the remaining amount of interest should be paid to them. Along with the said communication, the petitioners have also annexed the calculation of interest which according to them is payable by the respondents to them from May 21, 2004 to March 5, 2007. The learned counsel for the petitioners has also served a copy of the representation dated March 5, 2007, to the learned Assistant Government Pleader. On service of the communication dated March 5, 2007, the learned Assistant Government Pleader has

taken instructions from Mr.T.K.Damor, Special Land Acquisition Officer, Unit No.3, Ahmedabad, who is present in the Court, and states at the Bar that the interest payable to the petitioners from May 21, 2004 to February 28, 2007, shall be calculated by the respondents on or before March 21, 2007, and the amount of interest found payable shall be paid to the petitioners on or before May 31, 2007.

12. Thus, the original award dated May 21, 2004, made under Section 28A of the Act is restored and the petitioners are paid principal amount of compensation plus part of the interest and as the respondents have agreed to make payment of interest from May 21, 2004 to February 28, 2007, this Court is of the opinion that the petition deserves to be disposed of with certain directions.

13. For the foregoing reasons, the petition partly succeeds. The respondent No.2 is directed to calculate the amount of interest payable to the petitioners from May 21, 2004 to February 28, 2007. While calculating the amount of interest payable to the petitioners, the respondent No.2 shall take into consideration the

representation dated March 5, 2007, made by the petitioners to him in which the amount of interest payable to them is stated by the petitioners. The calculation of amount of interest payable to the petitioners shall be made by the respondent No.2 on or before March 21, 2007. Thereafter, the respondent No.2 shall make payment of amount of interest found payable to the petitioners on or before May 31, 2007. It is also directed that the amount of compensation as per the award dated May 21, 2004, shall also be paid to the claimants - Jasvantlal Mangaldas Shah and Gunvantlal Somchand who could not remain present when the amount was disbursed to other claimants and they shall also be granted the benefit of interest which may be made by the respondent No.2 in favour of the petitioners in the instant case.

14. It is relevant to notice that because of criminal negligence on the part of the officers, the State Government shall have to bear colossal loss of money by making payment of interest to the petitioners from May 21, 2004 to February 28, 2007. There is no manner of doubt that the Circular which was issued in

the year 1997 requiring all the Land Acquisition Officers to make payment of amount of compensation under Section 28A of the Act in terms of the award of the Court within three months is flagrantly flouted by the officers concerned. Therefore, the Secretary, Revenue Department, Government of Gujarat, is directed to make inquiry into the matter and recover the amount which the Government will have to pay to the petitioners and others by way of interest from the officer / officers who has/ have occasioned such colossal loss to the Government, if he comes to the conclusion that the said officer/ officers was/ were negligent in performance of their statutory duties under Section 28A of the Act.

15. It is further clarified that if the directions issued by this judgment are not complied with by the respondents, the petitioners would be entitled to revive the instant petition by filing a note and thereupon, a serious view of the matter would be taken by the Court.

16. Subject to abovereferred to directions, Rule is made absolute. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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